IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 854 of 2001

Date of decision: 26th September 2003

For the approval of:-

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice P.C. Verma, J.

- Whether the order/judgment should be sent to the reporters for reporting?

(yes)

- Whether the reporters be allowed to see the judgment?

(yes)

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C.J's Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

CIVILWRIT PETITION NO. 854 of 2001

Dr. Vijay Kumar Agarwal,
S/o Sri P.C. Agarwal,
Asstt. Professor, Department of
Chemical Engineering, IIT Roorkee ---- Petitioner

Vs.

Director of Indian Institute of Technology,
Roorkee, Distt. Haridwar & Others

---- Respondents

Mr. Arvind Kumar Sharma, Advocate for the petitioner.
Mr. R.D. Agarwal, Advocate for respondent No. 1 & 2.
Mr. Rakesh Thapliyal, Advocate for respondent No. 3.
Mr. Arvind Vashisht, Advocate for respondent No. 4.

Coram: Hon'ble S.H. Kapadia, C.J.,
Hon'ble P.C. Verma, J.

Date: 26th September, 2003:

ORAL JUDGEMENT (Hon'ble S.H. Kapadia, C.J.)

1. On 10th August 2003, 07 posts in the Combined Cadre of Associate/Assistant Professor were advertised. These posts became vacant in the Chemical Engineering Department of Indian Institute of Technology, Roorkee, Net off Special Recruitment Drive, 05 posts were reserved for Scheduled Caste, 02 posts were reserved for OBC and 02 posts were for General category. These posts were advertised keeping in view the vacancies, which were likely to arise in the next two years. 08 applications were received for the post of Associate Professor. 08 applications were received for the post of Assistant Professor. 10 applications were received for the post of Lecturer. In I.I.T. Roorkee there is a system of combining the cadres, which is called as Flexible Cadre Structure. It is a combination of two cadres. In this case we are concerned with the Joint Cadre of Associate/Assistant Professor/Lecturer. The Screening Committee short-listed the applicants. Ultimately, 06 candidates came within the zone of consideration for the post of Associate Professor, 04 candidates came within the zone of consideration for the post of Assistant Professor and 01 candidate came within the

zone of consideration for the post of Lecturer. It is important to note that out of 11 candidates, Respondent No. 4 was the only women candidate. On the basis of women's reservation of 20%, Respondent No. 4 has been appointed on 25th June 2001.

2. Dr. Vijay Kumar Agarwal, the petitioner herein, has challenged the appointment of Respondent No. 4 on two grounds. Firstly, that the post of Associate Professor was higher in rank as compared to the post of Assistant Professor and therefore he was entitled to be selected in the Joint Cadre. Secondly, he has pleaded that the Government Order on 20% women's reservation, which was horizontal reservation, has not been followed. In support of this second ground it has been urged that horizontal reservation for women has to be implemented category-wise and not by clubbing all the categories as mentioned in the Counter Affidavit filed by I.I.T. Roorkee.

3. We do not find any merit in this petition. As stated above, in I.I.T. Roorkee, there is Flexible Cadre Structure. It has been approved and notified by Government of Uttar Pradesh by Government Order dated 12th January 1995 and 9th January 1996. The advertisement in question specifically indicates flexible Cadre Structure. The advertisement refers to Combined Cadre of Assistant/Assistant Professor. The advertisement indicates 05 posts for Scheduled Castes, 02 for OBC and 02 for General Category net off posts falling under Special Recruitment Drive. In the circumstances, we are concerned with Combined Associate/Assistant Professor Cadre. Since it is a Combined Cadre for which selection have been made there is no merit in the argument of the petitioner that he should have been selected as the post of Associate Professor occupy a higher rank as compared to the post of Assistant Professor. If the argument of the petitioner is accepted it would defeat the concept of Flexible Cadre Structure. Hence, there is no merit in the first contention.

4. Now coming to the second ground of challenge, there is no violation of Government Orders regarding application of 20% women's reservation. As stated above, the Screening Committee found 06 candidates within the zone of consideration for the post of Associate Professor, 04 candidates were found within the zone of consideration for the post of Assistant Professor and 01 was found within the zone of consideration for the post of Lecturer. Therefore, 11 candidates came within the zone of consideration out of which Respondent No. 4 was the only women candidate. Therefore, there is no violation of the G.O. concerning horizontal reservation. Further, it may be noted that in Chemical Engineering in I.I.T. Roorkee there were 22 posts and none of them have been occupied by a women candidate. According to the Flexible Cadre Structure, 50% of the posts were earmarked for Professors. Therefore, only 11 posts for the Combined Cadre of Associate Professor/Assistant Professor/Lecturer were

available and keeping in view that position at least 02 posts from 11 were required to be filled in by women candidates. Therefore, there is no merit in the second ground of challenge.

5. It is, however, argued on behalf of the Petitioner that in the case of horizontal reservation for women, reservation have to be implemented category-wise and not by clubbing of all the categories. We do not find any merit in this argument. Firstly, in this case we are concerned with Flexible Cadre Structure. Secondly, if the argument of the Petitioner is accepted it would result in a deadlock and it would be impossible to implement women's reservation as very few posts become vacant in different categories compartment wise. For example in this case the Petitioner and Respondent No. 4 are covered under General Category. They have come within the zone of consideration under General Category. Both have come within the zone of consideration on the basis of merit. Respondent No. 4 has been selected on account of women reservation, applied to General Category. She got precedence over the Petitioner because of horizontal reservation which has been applied. Thirdly, as stated above under Flexible Cadre Structure there were 11 posts for Associate Professor/Assistant Professor/Lecturer within the Chemical Engineering Department and applying the ratio of 20% at least 02 posts were required to be filled by women. In the case of Anil Kumar Gupta Vs. State of U.P. reported in 1995 (05) SCC page 173 it has been held by the Supreme Court that there are two types of horizontal reservations namely 'Compartmentalised Horizontal Reservation' and "Overall Horizontal Reservation". In this case because of Flexible Cadre Structure what is applicable is "Overall Horizontal Reservation."

6. Before concluding, we may point out, that in future I.I.T. Roorkee should specifically state in its Advertisement the type of horizontal reservation which it seeks to apply. That while issuing Advertisement they must indicate the manner in which they would apply Horizontal Reservation as mentioned in the above judgment in the case of Anil Kumar Gupta Vs State of U.P. (Supra). Lastly, that our above directions are made applicable prospectively as Respondent No. 4 has been working in the cadre on and from the date of her appointment namely 25th June 2001.

7. For the foregoing reasons writ petition is rejected. No order as to costs. Interim order, if any, stands hereby vacated.

(P.C.Verma, J.) **(S.H. Kapadia,C.J.)**

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